

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 344

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Rhonda S. King

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; EXPANDING AND MODIFYING THE CREDIT FOR
EXPENSES FOR DEPENDENT CHILD DAY CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.1 NMSA 1978 (being Laws 1981,
Chapter 170, Section 1, as amended) is amended to read:

"7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY
CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT
INDIGENCY.--

A. As used in this section:

~~[(1) "caregiver" means a corporation or an
individual eighteen years of age or over who receives
compensation from the resident for providing direct care,
supervision and guidance to a qualifying dependent of the
resident for less than twenty-four hours daily and includes~~

.174571.2GR

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~related individuals of the resident but does not include a~~
2 ~~dependent of the resident;~~

3 ~~(2) "cost of maintaining a household" means~~
4 ~~the expenses incurred for the mutual benefit of the occupants~~
5 ~~thereof by reason of its operation as the principal place of~~
6 ~~abode of such occupants, including property taxes, mortgage~~
7 ~~interest, rent, utility charges, upkeep and repairs, property~~
8 ~~insurance and food consumed on the premises. "Cost of~~
9 ~~maintaining a household" shall not include expenses otherwise~~
10 ~~incurred, including cost of clothing, education, medical~~
11 ~~treatment, vacations, life insurance, transportation and~~
12 ~~mortgages;]~~

13 (1) "annual minimum wage" means the product,
14 rounded up to the nearest one thousand dollars (\$1,000), of the
15 New Mexico hourly minimum wage in effect on the last day of the
16 taxable year multiplied by two thousand eighty hours;

17 (2) "child day care expenses" means
18 "employment related expenses" as defined in Section 21(b)(2) of
19 the Internal Revenue Code that are incurred in New Mexico by
20 the taxpayer for the care of a qualifying dependent, subject to
21 the limitation in Section 21(d) of the Internal Revenue Code,
22 and reduced by the aggregate amount excluded from gross income
23 under Section 129 of the Internal Revenue Code; but "child day
24 care expenses" does not include any amounts paid to related
25 individuals as described in Section 21(e)(6) of the Internal

.174571.2GR

underscored material = new
[bracketed material] = delete

1 Revenue Code;

2 (3) "dependent" means "dependent" as defined
3 by Section 152 of the Internal Revenue Code; ~~[as that section~~
4 ~~may be amended or renumbered, but also includes any minor child~~
5 ~~or stepchild of the resident who would be a dependent for~~
6 ~~federal income tax purposes if the public assistance~~
7 ~~contributing to the support of the child or stepchild was~~
8 ~~considered to have been contributed by the resident;~~

9 ~~(4) "disabled person" means a person who has a~~
10 ~~medically determinable physical or mental impairment, as~~
11 ~~certified by a licensed physician, that renders such person~~
12 ~~unable to engage in gainful employment;~~

13 ~~(5)]~~ (4) "gainfully employed" means working or
14 looking for work for remuneration for others, either full time
15 or part time, or self-employment in a business or partnership;
16 "gainfully employed" includes a spouse who is a student or is
17 incapable of caring for himself as described in Section
18 21(d)(2) of the Internal Revenue Code; and

19 ~~[(6)]~~ (5) "qualifying dependent" means a
20 dependent ~~[under the age of fifteen at the end of the taxable~~
21 ~~year who receives the services of a caregiver]~~ of the taxpayer
22 as defined in Section 152(a)(1) of the Internal Revenue Code
23 who has not attained the age of fifteen on the last day of the
24 taxpayer's taxable year, but "qualifying dependent" does not
25 include any individual who would not be considered a dependent

.174571.2GR

underscored material = new
[bracketed material] = delete

1 under the special dependency test of Section 21(e)(5) of the
2 Internal Revenue Code.

3 B. Any taxpayer who is a full-year or first year
4 resident of New Mexico who files an individual New Mexico
5 income tax return and who is not a dependent of another
6 taxpayer may claim a credit for child day care expenses
7 incurred [~~and paid to a caregiver in New Mexico~~] during the
8 taxable year by [~~such resident~~] the taxpayer if the [~~residents~~]
9 taxpayer:

10 [~~(1) singly or together with a spouse~~
11 ~~furnishes over half the cost of maintaining the household for~~
12 ~~one or more qualifying dependents for any period in the taxable~~
13 ~~year for which the credit is claimed;~~

14 ~~(2)] (1) is gainfully employed for any period~~
15 ~~for which the credit is claimed or, if a joint return is filed,~~
16 ~~both spouses are gainfully employed; [~~or one is disabled for~~~~
17 ~~any period for which the credit is claimed;~~

18 ~~(3) compensates a caregiver for child~~
19 ~~day care for a qualifying dependent to enable such resident~~
20 ~~together with his spouse, if any and if not disabled, to be~~
21 ~~gainfully employed;~~

22 ~~(4) is not a recipient of public assistance~~
23 ~~under a program of aid to families with dependent children, a~~
24 ~~program under the New Mexico Works Act or any successor program~~
25 ~~during any period for which the credit provided by this section~~

.174571.2GR

underscored material = new
[bracketed material] = delete

1 ~~is claimed;~~

2 (2) files a joint return if the taxpayer's
3 filing status is "married" on the last day of the taxable year,
4 but the taxpayer is not considered married if the conditions
5 described in either Section 21(e)(3) or 21(e)(4) of the
6 Internal Revenue Code are met; and

7 ~~[(5)]~~ (3) has [a modified] an adjusted gross
8 income [including child support payments, if any] of not more
9 than the [annual income that would be derived from earnings at
10 double the federal minimum wage] sum of double the annual
11 minimum wage plus four thousand dollars (\$4,000).

12 C. The credit provided for in this section shall be
13 forty percent of the ~~[actual compensation paid to a caregiver~~
14 ~~by the resident for a qualifying dependent]~~ child day care
15 expenses incurred during the taxable year by the taxpayer not
16 to exceed [four hundred eighty dollars (\$480)]:

17 (1) in taxable years beginning on January 1,
18 2009, seven hundred twenty dollars (\$720) for each qualifying
19 dependent or a total of one thousand eight hundred dollars
20 (\$1,800) for all qualifying dependents for a taxable year; or

21 (2) in taxable years beginning on or after
22 January 1, 2010, nine hundred sixty dollars (\$960) for each
23 qualifying dependent or a total of [one thousand two hundred
24 dollars (\$1,200)] two thousand four hundred dollars (\$2,400)
25 for all qualifying dependents for a taxable year. [For the

.174571.2GR

underscored material = new
[bracketed material] = delete

1 ~~purposes of computing the credit, actual compensation shall not~~
2 ~~exceed eight dollars (\$8.00) per day for each qualifying~~
3 ~~dependent.]~~

4 D. The amount of the credit computed under
5 Subsection C of this section is reduced by twenty percent, but
6 not below zero, for each one thousand dollars (\$1,000) or
7 fraction thereof by which the taxpayer's adjusted gross income
8 exceeds double the annual minimum wage.

9 ~~[D.]~~ E. The [caregiver] provider of child day care
10 services shall furnish the [resident] taxpayer with a signed
11 statement of compensation paid by the [resident] taxpayer to
12 the [caregiver] provider for child day care services. Such
13 statements shall specify the dates and the total number of days
14 for which payment has been made, and the name, address and
15 taxpayer identification number of the service provider.

16 ~~[E.]~~ F. If the [resident] taxpayer has a federal
17 tax liability, the taxpayer shall claim from the state not more
18 than the difference between the amount of the state child care
19 credit for which the taxpayer is eligible and the amount of the
20 federal credit for child and dependent care expenses allowed
21 under Section 21 of the Internal Revenue Code that the taxpayer
22 is able to deduct from federal tax liability for the same
23 taxable year; provided, for first year residents only, the
24 amount of the federal credit for child and dependent care
25 expenses may be reduced to an amount equal to the amount of

.174571.2GR

underscored material = new
[bracketed material] = delete

1 federal credit for child and dependent care expenses the
2 [~~resident~~] taxpayer is able to deduct from federal tax
3 liability multiplied by the ratio of the number of days of
4 residence in New Mexico during the [~~resident's~~] taxpayer's
5 taxable year to the total number of days in the [~~resident's~~]
6 taxpayer's taxable year.

7 [F.] G. The credit provided for in this section may
8 be deducted from the taxpayer's New Mexico income tax liability
9 for the taxable year. If the credit exceeds the taxpayer's
10 income tax liability, the excess shall be refunded to the
11 taxpayer.

12 [~~G. A husband and wife maintaining a household for
13 one or more qualifying dependents and filing separate returns
14 for a taxable year for which they could have filed a joint
15 return:~~

16 ~~(1) may each claim only one-half of the credit
17 that would have been claimed on a joint return; and~~

18 ~~(2) are eligible for the credit provided in
19 this section only if their joint modified gross income,
20 including child support payments, if any, is not more than the
21 annual income that would be derived from earnings at double the
22 federal minimum wage.]"~~

23 Section 2. APPLICABILITY.--The provisions of this act
24 apply to taxable years beginning on or after January 1, 2009.